

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

TRACIE CHIN and SALVATORE
MONTALBANO, individually, and on behalf
of other members of the general public
similarly situated,

CLASS ACTION

Case No. 12-cv-2150-MJD-TNL

Plaintiffs,

vs.

GENERAL MILLS, INC.,

Defendant.

**DEFENDANT GENERAL MILLS,
INC.'S MOTION TO DISMISS
AMENDED COMPLAINT
PURSUANT TO RULES 12(b)(1)
AND 12(b)(6)**

Pursuant to Rules 12(b)(1) and 12(b)(6), Defendant General Mills, Inc. (“General Mills”) moves this Court for an Order dismissing the Amended Complaint. General Mills moves the Court for an Order dismissing all Counts in the Amended Complaint pursuant to Rule 12(b)(1) because Plaintiffs lack standing under Article III of the United States Constitution to assert claims related to products they did not purchase.

General Mills also moves this Court for an Order dismissing Count I (Magnuson-Moss Warranty Act written-warranty claim), Count II (Magnuson-Moss Warranty Act implied-warranty claim), Count III (unjust enrichment), Count IV (breach of express warranty), Count V (breach of implied warranty), Count VI (fraudulent misrepresentation), Count VII (Minnesota’s consumer protection statutes), and Count X (New Jersey Consumer Fraud Act) of the Amended Complaint pursuant to Rule 12(b)(6) because Plaintiffs have failed to state viable claims.

This Motion is based upon the accompanying Memorandum of Law in support of the Motion, the Declaration of Maria Carolina Comings, Exhibits 1-11 thereto, as well as the files, records, and proceedings herein.

Dated: January 22, 2013

Respectfully submitted,

s/ Jerry W. Blackwell

Jerry W. Blackwell, Minn. Bar #186867
Benjamin W. Hulse, Minn. Bar #390952
Mary S. Young, Minn. Bar #392781
Emily A. Babcock, Minn. Bar #391439
BLACKWELL BURKE P.A.
431 South Seventh Street, Suite 2500
Minneapolis, MN 55415
Telephone: (612) 343-3200
Fax: (612) 343-3205
blackwell@blackwellburke.com
bhulse@blackwellburke.com
myoung@blackwellburke.com
ebabcock@blackwellburke.com

**ATTORNEYS FOR DEFENDANT
GENERAL MILLS, INC.**